

REMARKS / ARGUMENTS

This Amendment is submitted in full response to the outstanding Office Action dated June 3, 2003, and is accompanied by a Request for an appropriate Extension of Time and the corresponding PTO fee for same.

In light of the Examiner's indication of allowable subject matter in that Office Action, as noted more in detail below, the Applicant is hereby amending the claims herein so as to put this application in condition for immediate allowance. More specifically, claims 5 and 8-9 were indicated to be allowable if rewritten or amended to overcome the objections under 35 U.S.C. Section 112, and claims 1 and 17 were indicated to be allowable if re-written in independent form, including the limitations of the base claim and any intervening claims.

In the outstanding Office Action, claims 1 and 4 stand rejected under 35 U.S.C. 102(b) as being anticipated by Apple (U.S. Patent No. 5,020,557). In addition, claims 1, 4, 10, 11 and 16 stand rejected under 35 U.S.C. §102(b) as being anticipated by Dubunsky (U.S. Patent No. 5,460,984). Also, claims 2-3, 6-7, 12-14 and 18, 19 were withdrawn from further consideration based on considerations relating to the election requirement set forth on the Office Action of December 3, 2002. Finally, the specification was objection to under 35 U.S.C. Section 112 and claims 1, 5, 9 and 10 were rejected on the same grounds.

Applicant is highly appreciative of the Examiner's detailed

and conscientious review of this application, and respectfully asks for her reconsideration of same, including the amended and new claims presented herein, in light of the following remarks.

I. Rejections Under 35 U.S.C. §102 are Now Moot:

Without addressing the substantive issues raised by the rejection of claims 1, 4, 10, 11 and 16 under Section 102, these claims have been cancelled herein, without prejudice to their being re-presented in a continuing patent application. As noted above, this action is being taken solely for purposes relating to facilitating the allowance of this case, but regardless, the rejections under Section 102 are now moot.

II. Resolution of Objections/Rejections Under 35 U.S.C. §112:

It is the Examiner's position that the specification fails to clearly define whether or not the main and secondary hub members (18,30) are capable of rotating about a longitudinal axis of pole member 12 in a "final product" of Applicant's invention. It is further stated in the outstanding Office Action that a claim must be directed to a final product. As recognized by the Examiner, the secondary hub member 30 is fixed in a substantially rigid position about the pole member 12 when a nut 17 is tightened about the bolt 15. However, the Examiner also acknowledges that the secondary hub member 30 is freely rotatable when the nut 17 is loosened.

Applicant disagrees with the contention that the specification

is not clear whether or not, "in a final product" the nut 17 is fixed to the upper end of the pole member. In fact, the Examiner's attention is respectfully directed to page 11, lines 3-19; page 16, lines 2-7 and page 20, lines 6-15. As set forth in these portions of the specification, Applicant's invention is directed to an umbrella frame assembly having a main hub member 18 and a secondary hub member 30. The structural features, including the bolt 15 and the nut 17, as described throughout the specification and drawings, clearly provide for the selective tightening or loosening of the nut 17 about the bolt 15 such that **in the final product**, the secondary hub member 30 may be either fixed or allowed to rotate, as desired.

Further, once the canopy 21 is disposed in its mounted position, a finial or end cap 40 is secured to the outermost end of the bolt so as to maintain the canopy 21 in a centered orientation. (See page 11 lines 15-19). A thorough review of the specification, drawings and claims clearly indicate that even when the canopy 21 is positioned as intended, and the end cap 40 is attached to the end of the bolt 15, the nut 17 can be loosened so as to change the orientation and/or position of the canopy and/or remainder of the umbrella frame by rotating **both** the secondary hub 30 and the main hub 18. It is further evident that the main hub 18 is free to slide longitudinally along the length of the pole member 12. As specifically indicated on page 10, lines 5-7 of the specification, the main hub member 18 is capable of rotating about the

longitudinal axis of the pole member 12.

Therefore, a thorough review of the content of the specification, drawings and claims of this application clearly indicates that the "final product" of the umbrella frame allows for a rotation of both the main hub member 18 and the second hub member 30. In other words, the second hub member 30 is clearly rotatable about the pole member 12, with the main hub member 18 caused to similarly rotate therewith due to its being linked thereto, **when and if** the nut 17 is loosened about the bolt 15. Nothing in the description of the specification provides a contrary indication.

The Examiner's attention is further directed to new drawings submitted with this Amendment. In newly submitted, amended Figure 2 a directional arrow has been added adjacent to the secondary hub 30 for purposes of schematically representing the ability of the secondary hub 30 to rotate about the pole member 12. In addition, a new Figure 17 has been added to the drawings showing detailed structural features originally recited in independent claim 9 at lines 5-13.

More specifically, claim 9 recites a secondary hub member (30) supported on said pole member (12) near said top end (14) thereof. The secondary hub member includes a central cavity (34) extending axially there-through which is sized to receive at least said top end (14) of the pole member therein. With specific reference to newly submitted Figure 17, lines 9-13 of claim 9 additionally define the secondary hub member 30 as including a rigid bolt member

15' extending downwardly and into said at least partially hollow interior of said pole member (14) such that said secondary hub member (30) is capable of rotating about said longitudinal axis of said pole member (12).

Therefore, newly submitted Figure 17 clearly discloses all of the structural features recited in original claim 9, which stands as being objected to only. Also, the Examiner is again invited to review the specification at page 11, lines 20-25 and page 12, lines 1-7. All of the structural features disclosed in new Figure 17 find clear antecedent basis in these portions of the specification as well as original claim 9. Care was taken not to add any new subject matter in new Figure 17.

For the reasons set forth above, Applicant contends that the specification and claims of this application are in clear compliance with the first paragraph of 35 U.S.C. §112. Accordingly, based on the Examiner's recognition that claims 5, 8 and 9 contain allowable subject matter, it is respectfully requested that the Examiner reconsider the outstanding rejections to the claims and objections to the specification, under 35 U.S.C. 112.

III. Remaining Claims Rewritten to be Allowable:

As noted above, the Examiner has indicated that claims 15 and 17 contain allowable subject matter and would be allowable if written in independent form including all of the limitations of the base claim and any intervening claim. As a result, claim 10 has

In addition, new independent claim 21 has been added and contains the allowable subject matter as originally presented in claim 15 plus the language of intervening claim 11 and that of base claim 10. Based on the above, Applicant respectfully contends that independent claims 10 and 21 are now in condition for allowance.

IV. Conclusion:

In light of the foregoing Amendments and Remarks, it is now believed that all of the claims still remaining in this application are now in condition for immediate allowance, which action is respectfully requested.

In the event that any additional fee may be required by this Amendment, the Commissioner is hereby authorized to charge any fees and/or credits to our **Deposit Account No. 13-1227**.

For the reasons set forth above it is believed that this application is in condition for allowance and such favorable action is respectfully solicited.

Respectfully Submitted,

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Date: 12-3-2003



APPENDIX

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